

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

ROSS DEAMBROGIO, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

v.

THE FRESH MARKET, INC., RAY BERRY,  
RICK ANICETTI, MICHAEL D. CASEY,  
JEFFREY NAYLOR, RICHARD NOLL, BOB  
SASSER, ROBERT K. SHEARER,  
MICHAEL TUCCI, STEVEN TANGER, and  
JANE THOMPSON,

Defendants.

Case No. 1:16-cv-00239-LPS

**STIPULATION AND [PROPOSED] ORDER  
CONCERNING PLAINTIFF'S VOLUNTARY DISMISSAL OF THE  
ABOVE ACTION AND PLAINTIFF'S COUNSEL'S ANTICIPATED  
APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

WHEREAS, on March 14, 2016, The Fresh Market, Inc. ("Fresh Market" or the "Company") announced that it entered into an Agreement and Plan of Merger ("Merger Agreement") with Apollo Global Management, LLC ("Apollo") pursuant to which the Company's stockholders would receive \$28.50 per share via an all-cash tender offer ("Tender Offer") followed by a merger under state law ("Proposed Transaction");

WHEREAS, on March 25, 2016, a Schedule 14D-9 ("14D-9") was filed with the Securities and Exchange Commission ("SEC") that announced the commencement of the Tender Offer and disclosed certain information regarding the Proposed Transaction including among other things the following: (i) that the Fresh Market board of directors ("Fresh Market Board" or "Individual Defendants") determined that the Proposed Transaction was in the best interests of Fresh Market's stockholders and recommended that Company stockholders tender their shares;

(ii) background information concerning the process undertaken by the Fresh Market Board leading up to entering into the Merger Agreement; and (iii) certain internal financial information about Fresh Market and a summary of the fairness opinion by the financial advisor engaged by the Company, J.P. Morgan Securities, LLC (“J.P. Morgan”);

WHEREAS, on April 7, 2016, Plaintiff Ross Deambrogio (“Plaintiff”), a stockholder of Fresh Market, filed a putative class action complaint in the United States District Court for the District of Delaware (“Complaint”) against Fresh Market and the Individual Defendants alleging claims for violations of Sections 14(e), 14(d)(4) (and SEC Rule 14d-9 promulgated thereunder) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”). The Complaint alleges, *inter alia*, that the 14D-9 was false and/or misleading because it contained material misstatements and omissions concerning the Proposed Transaction. The Complaint alleges that Defendants failed to disclose all material information necessary for Fresh Market stockholders to make an informed decision regarding the Proposed Transaction, and demanded that the misstatements and omissions be corrected in order to make existing statements in the 14D-9 not materially misleading. Specifically, Plaintiff alleged that the 14D-9 omitted and/or misrepresented material information concerning, among other things: (i) the background of the Proposed Transaction; (ii) the data and inputs underlying the financial valuation methods that purportedly support the fairness opinion provided by Fresh Market’s financial advisor J.P. Morgan; and (iii) Fresh Market’s financial projections and extrapolated projections relied upon by J.P. Morgan. The Complaint sought to enjoin the Tender Offer, damages in the event the Proposed Transaction was consummated, certain other declaratory and equitable relief, and attorneys’ fees and costs;

WHEREAS, on April 11, 2016, Plaintiff moved the Court for a preliminary injunction to enjoin the termination of the Tender Offer until such time as Defendants amended the 14D-9 to address Plaintiff's claims that the 14D-9 was false and/or misleading ("Motion to Enjoin");

WHEREAS, on April 13, 2016, the Company filed with the SEC additional disclosures that amended and supplemented the 14D-9 ("Supplemental Disclosures") and that, among other things, addressed Plaintiff's claims in his Complaint and grounds for the Motion to Enjoin that the 14D-9 was false and/or misleading under Sections 14(e), 14(d)(4) (and SEC Rule 14d-9 promulgated thereunder) and 20(a) of the Exchange Act;

WHEREAS, on April 13, 2016, Plaintiff withdrew his Motion to Enjoin and informed the Court that his Motion to Enjoin had been mooted by the Supplemental Disclosures;

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned attorneys for the respective parties:

1. Plaintiff's claims in this Action were mooted by the Supplemental Disclosures and consequently he voluntarily dismisses his claims, without prejudice;
2. Plaintiff asserts that the Supplemental Disclosures were issued by Defendants in response to this Action and the efforts of his counsel to prosecute class claims, and therefore his counsel are entitled to a fee and expense award;
3. Defendants deny that Plaintiff's counsel are entitled to a fee and expense award; and
4. This Court retains continuing jurisdiction over the parties in the Action for purposes of further proceedings including the adjudication of Plaintiffs' Fee Application.

Dated: June 29, 2016

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*Attorneys for Defendants Ray Berry and Brett Berry*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_, 2016

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HON. LEONARD P. STARK  
UNITED STATES DISTRICT COURT JUDGE